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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2554 OF 2007

Shrikant T. Divate ... Petitioner

V/s

1. The President,
   Subash Vidya Mandal, Pune; & 3 ors. ... Respondents

Mrs. Anita A. Agarwal for the petitioner.

Ms. Shilpa R. Mangale for the Resp. No.1.

Mr. M.B.Gawade for the Resp. No.2.

Mr. S.K.Chinchalikar, A.G.P. for the Resp.Nos. 3 & 4.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 18TH OCTOBER, 2007.

P.C.:

Rule. Rule returnable forthwith.

1. This writ petition has been filed by the petitioner challenging the order passed by the School Tribunal refusing to condone the delay in preferring the appeal No. 11 of 2006. The appeal was preferred by the petitioner contending that the notice dated 13.6.2006 compulsorily retiring him from service after three months from the date of the notice, was illegal. The petitioner who appeared in person before the School Tribunal filed an application for condoning the delay in

preferring the appeal. This application was rejected by the School Tribunal and hence the present petition.

2. In my opinion, the School Tribunal has miserably failed to consider the facts in the case before it. The notice which was challenged by the petitioner was dated 13.6.2006 which compulsorily retired him on and from 13.9.2006. The appeal was filed on 4.8.2006. The notice was to take effect only on 13.9.2006. The petitioner had challenged the notice prior to the notice taking effect. Hence, there was no question of any delay in approaching the School Tribunal. The Tribunal ought to have held that the application for condoning delay was misconceived since there was in fact no delay in filing the appeal. Assuming the date 13.6.2006 is to be considered as the date when the order took effect, the delay would be of less than 20 days. No reasons have been given by the Tribunal for not condoning the delay. The Tribunal, on the other hand, has proceeded to conclude that it does not have any jurisdiction to entertain the appeal as no sufficient cause for condoning the delay was made out. The petitioner has pointed out in his application for condoning the delay that he was unwell and that he was not able to obtain leave in order to file the appeal. In these circumstances, the Tribunal has utterly failed to

consider the facts in the case while dismissing the appeal.

3. Petition allowed. Rule made absolute.

4. Appeal No. 11 of 2006 shall be heard by the School Tribunal on merits.

5. It is made clear that the findings and observations of the School Tribunal in Appeal No. 74 of 2006 will not influence the School Tribunal while dealing with the Appeal No. 11 of 2006.

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